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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation and Petition to  
Revoke Probation Against:

RAFAEL R. NICOLAS, II  
1876 East Woodgate Drive  
West Covina, California 91792

Respiratory Care Practitioner License No. 20078

Respondent.

Case No. R-1873

**ACCUSATION AND  
PETITION TO REVOKE  
PROBATION**

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation and Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about May 4, 1998, the Respiratory Care Board (Board) issued Respiratory Care Practitioner License Number 20078 to Rafael R. Nicolas, II (Respondent). This license was in effect at all times relevant to the charges brought herein, and will expire on October 31, 2005, unless renewed.

3. In a disciplinary action entitled "In the Matter of Accusation Against Rafael R. Nicolas, II, Case No. R-1533, the Board issued a decision effective May 21, 2001, in which

1 respondent's license was revoked. However, the revocation was stayed and respondent's license  
2 was placed on probation for a period of three (3) years with certain terms and conditions. A copy  
3 of that decision is attached as Exhibit 1 and is incorporated herein by reference.

#### 4 JURISDICTION

5 4. This Accusation and Petition to Revoke Probation is brought before the  
6 Board under the authority of the following laws. All section references are to the Business and  
7 Professions Code unless otherwise indicated.

8 5. Section 3710 of the Code states: "The Respiratory Care Board of  
9 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,  
10 the Respiratory Care Practice Act]."

11 6. Section 3718 of the Code states: "The board shall issue, suspend, and  
12 revoke licenses to practice respiratory care as provided in this chapter."

13 7. Section 3754 of the Code states: "The board may deny an application for,  
14 or issue with terms and conditions, or suspend or revoke, or impose probationary conditions upon,  
15 a license in any decision made after a hearing, as provided in Section 3753."

16 8. Section 3750 of the Code states:

17 "The board may order the denial, suspension or revocation of, or the imposition of  
18 probationary conditions upon, a license issued under this chapter, for any of the following  
19 causes:

20 " . . .

21 "(f) Negligence in his or her practice as a respiratory care practitioner.

22 " . . .

23 "(j) The commission of any fraudulent, dishonest, or corrupt act which is  
24 substantially related to the qualifications, functions, or duties of a respiratory care  
25 practitioner. . . ."

26 9. Section 3755 of the Code states:

27 "The board may take action against any respiratory care practitioner who is charged  
28 with unprofessional conduct in administering, or attempting to administer, direct or indirect

1 respiratory care. Unprofessional conduct includes, but is not limited to, repeated acts of  
2 clearly administering directly or indirectly inappropriate or unsafe respiratory care  
3 procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques,  
4 and violation of any provision of Section 3750. The board may determine unprofessional  
5 conduct involving any and all aspects of respiratory care performed by anyone licensed as  
6 a respiratory care practitioner.”

#### 7 COST RECOVERY

8 10. Section 3753.5, subdivision (a) of the Code states:

9 “In any order issued in resolution of a disciplinary proceeding before the board, the  
10 board or the administrative law judge may direct any practitioner or applicant found to have  
11 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the  
12 investigation and prosecution of the case.”

13 11. Section 3753.7 of the Code states:

14 “For purposes of the Respiratory Care Practice Act, costs of prosecution shall  
15 include attorney general or other prosecuting attorney fees, expert witness fees, and other  
16 administrative, filing, and service fees.”

17 12. Section 3753.1, subdivision (a) of the Code states:

18 "An administrative disciplinary decision imposing terms of probation may include,  
19 among other things, a requirement that the licensee-probationer pay the monetary costs associated  
20 with monitoring the probation."

#### 21 FIRST CAUSE FOR DISCIPLINE

22 13. Respondent is subject to disciplinary action under section 3750, subdivision  
23 (f) of the Code, in that he was negligent in his practice as a respiratory care practitioner. The  
24 circumstances are as follows:

25 A. In June 2002, respondent was employed as a respiratory therapist at Tustin  
26 Hospital and Medical Center. On June 5, 2002, at 9:00 p.m., respondent was providing  
27 respiratory therapy to Patient C.A, a seven year old ventilator dependent patient with  
28 traumatic brain injury in the Pediatric Sub Acute Unit. The physician’s order was for an

1 Intermittent Positive Pressure Breathing (IPPB) treatment every six hours with the  
2 bronchodilator aerosol medications Albuterol .5 ml and Atrovent .5 mg. Respondent  
3 removed the ventilator from Patient C.A. and started the IPPB treatment as ordered by the  
4 patient's physician. Respondent did not check the IPPB machine to determine if it had  
5 disconnect alarms or if the disconnect alarms were properly set.

6 B. The hospital's policy and procedure was for a respiratory therapist to stay  
7 in a patient's room while a breathing treatment was being administered. It was also the  
8 hospital's policy to monitor a patient's heart rate and respiratory rate before, during and  
9 after an IPPB treatment, and observe the patient for complications of the treatment, and for  
10 any side effects of the aerosol medications being administered.

11 C. Respondent left Patient C.A. to answer a ventilator alarm that was going  
12 off in another room. He did not inform anyone that he was leaving C.A. to answer the  
13 alarm. He did not ask anyone to monitor C.A. while he left the room. He did not take the  
14 precaution of reconnecting C.A. to his regular ventilator while left the room.

15 D. Respondent returned to Patient C.A. about five to seven minutes later. The  
16 patient had become disconnected from the IPPB machine. Respondent noted that C.A.  
17 appeared dusky and had no oxygen saturation reading. At 9:15 p.m., respondent manually  
18 ventilated C.A. for several minutes with 100% oxygen until the oxygen saturation level  
19 increased to 88-94%, and placed the patient back on the ventilator.

20 E. At 9:25 p.m., C.A.'s condition deteriorated and the nurse was unable to  
21 obtain any vital signs. At 9:30 p.m., C.A. was not breathing and respondent manually  
22 ventilated him again with 100% oxygen. The urgent care physician arrived at 9:40 p.m.  
23 and C.A. was placed on a cardiac monitor. C.A. developed respiratory failure, suffered  
24 cardiac arrest, and a code blue was called. Emergency medications were administered, but  
25 C.A. did not respond and expired at 10:10 p.m.

26 F. On January 17, 2003, the Board received a declaration from respondent  
27 signed under penalty of perjury regarding the incident. He admitted he started an IPPB  
28 treatment on a pediatric patient, and left the patient when he heard a ventilator alarm go off

1 in another room. When he came back about five to seven minutes later, he found the  
2 patient was disconnected from the IPPB machine.

3 Negligent Acts

4 G. On June 5, 2002, respondent committed acts of negligence in his care and  
5 treatment of Patient C.A. which included, but were not limited to, the following:

6 (1) Respondent left a ventilator dependent pediatric patient unattended  
7 during an IPPB treatment for about five to seven minutes.

8 (2) Respondent failed to notify anyone that he was leaving the patient  
9 unattended to answer the alarm of another patient.

10 (3) Respondent failed to properly monitor Patient C.A. for complications  
11 of the IPPB treatment and for side effects of the medications.

12 (4) Respondent failed to ask anyone to monitor his patient while he left the  
13 room.

14 (5) Respondent failed to check the IPPB machine to determine if it had a  
15 disconnect alarm or if the disconnect alarm was properly set.

16 (6) Respondent failed to take the precaution of reconnecting the patient to  
17 his regular ventilator while he left the room.

18 SECOND CAUSE FOR DISCIPLINE

19 (Commission of Fraudulent, Dishonest or Corrupt Act)

20 14. Respondent is subject to disciplinary action under section 3750, subdivision  
21 (j) of the Code, in that he committed a fraudulent, dishonest or corrupt act which is substantially  
22 related to the qualifications, functions, or duties of a respiratory care practitioner. The facts and  
23 circumstances are as follows:

24 A. On July 8, 2002, the Board received respondent's Quarterly Report of  
25 Compliance dated July 1, 2002, for the period April 1 through June 30, 2002. Respondent  
26 answered "No" to question number 4, "Have you had any corrective action take against  
27 you by any of your employers (including warnings)?"

28 B. On June 27, 2002, respondent's employer Tustin Hospital and Medical

Center issued an "Advice of Performance Deficiency Unsatisfactory Conduct" to respondent regarding the June 5, 2002, incident when he left a patient unattended while receiving bronchodilator therapy via an IPPB machine.

C. Respondent finally reported this incident to the Board in his Quarterly Report of Compliance dated January 6, 2003 for the period October 1 through December 31, 2002, received by the Board on January 9, 2003. Respondent marked "Yes" to question number 4 regarding corrective action taken against him. He reported that he was given a final warning for an incident in which a patient expired and attached a letter explaining the incident.

### THIRD CAUSE FOR DISCIPLINE

#### (Unprofessional Conduct)

15. Respondent is subject to disciplinary action under section 3755 of the Code, in that he engaged in unprofessional conduct in his practice as a respiratory care practitioner. The facts and circumstances, set forth in Paragraph 13 of this Accusation and Petition to Revoke Probation, are incorporated herein by reference.

### FIRST CAUSE TO REVOKE PROBATION

#### (Obey All Laws)

16. At all times since the effective date of respondent's probation, Condition 2 stated:

"Respondent shall obey all laws, whether federal, state, or local, and all regulations governing the practice of respiratory care in California."

17. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 2, referenced above. The facts and circumstances regarding this violation are as follows:

Respondent violated Code sections 3750, subdivision (f), negligence in his practice as respiratory care practitioner, and 3755, unprofessional conduct, in that he left a patient unattended who became disconnected from a breathing treatment. Respondent violated Code section 3750, subdivision (j) in that he was dishonest in completing his Quarterly

1 Report of Compliance and failed to report that he had received disciplinary action. The  
2 facts and circumstances set forth in Paragraphs 13, 14, and 15 of this Accusation and  
3 Petition to Revoke Probation, are incorporated herein by reference.

4 PRAYER

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
6 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

- 7 1. Revoking the probation that was granted by the Respiratory Care Board in  
8 Case Number R-1533, and imposing the disciplinary order that was stayed, thereby revoking  
9 Respiratory Care Practitioner License Number 20078 issued to Rafael R. Nicolas, II;  
10 2. Ordering Rafael R. Nicolas, II to pay the Respiratory Care Board the costs  
11 of the investigation and enforcement of this case, and if placed on probation, the costs of probation  
12 monitoring;  
13 3. Taking such other and further action as deemed necessary and proper.

14  
15 DATED: March 10, 2004  
16

17  
18 Original signed by Colleen Whitestine for:  
19 STEPHANIE NUNEZ  
20 Executive Officer  
21 Respiratory Care Board of California  
22 Department of Consumer Affairs  
23 State of California  
24 Complainant  
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26  
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